Court No.2

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 95 of 2005 (S/B)

Sushil Kumar Singhal
S/o Late Shri Sewa Ram Singhal,
Assistant Engineer-V (Retd.),
Upper Ganga Canal (Modn.) Division-1
(World Bank), Roorkee,
R/o F-12 Subhash Nagar (Mahipal Campus),
Roorkee, District-Haridwar.

…….. **Petitioner.**

Versus

1. Pramukh Sachiv, Irrigation Department
   Uttar Pradesh, Lucknow.
2. Pramukh Sachiv, Finance Department, Uttar
   Pradesh, Lucknow.
3. Executive Engineer, Upper Ganga Canal
   (Modernization Division I, Roorkee,
   District Haridwar.
4. Director, Pension Directorate, Uttar Pradesh,
   8th Floor Indira Bhawan, Lucknow.

…… **Respondents.**

Sri Sunil Kumar Jain, learned counsel for the petitioner
Learned Addl. Chief Standing Counsel for the State of U.P./respondents.

Date: November 14, 2006

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal,J.

Per Hon'ble P.C. Verma,J.

This petition has been filed by the petitioner seeking writ of certiorari to quash the orders dated 23.3.2005 and 23.4.2005 passed by respondent Nos. 3 & 4 respectively, contained in Annexure Nos. 3 & 5 to the writ petition, by which the pension of the petitioner has

been wrongly revised and order for recovery of the alleged excess amount was passed.

2. Brief facts of the case are that the petitioner was retired on 31.12.2003 as Assistant Engineer, Upper Ganga Canal (Modernization) Division-1, Roorkee. At the time of his retirement, the petitioner was drawing a salary of Rs. 11,625/- per month plus other admissible allowances as per Government Orders. It is alleged that the respondents never raised any objection regarding the salaries of the petitioner fixed from time to time. After the retirement the petitioner was getting a sum of Rs. 5813/- plus dearness allowance as interim pension per month. It is alleged that the said fixation of pension was correct and to the satisfaction of the department. The interim pension of the petitioner was extended from July, 2004 to December 2004 for a period of six months by respondent No.3 in the month of July 2004. The petitioner also alleged that after a lapse of one and a half year the respondent No.3, vide the impugned order dated 23.3.2005 reduced the salary Rs. 10, 975/- instead of Rs. 11, 625/-. The petitioner made representation before the respondent Nos. 3 & 4 on 28.3.2005 against the said order dated 23.3.2005. In pursuance of the order dated 23.3.2005 the respondent No.3 also passed order for recovery of Rs. 99,522/- from the petitioner. The petitioner made a representation dated 28.3.2005 against the order of recovery which was also rejected by the respondent No.4 on 10.5.2005 without giving an opportunity to the petitioner. It is alleged that the respondent Nos. 3 & 4 arbitrarily and malafide intention without following the correct procedure of law and without giving any opportunity of hearing to the

petitioner, the impugned orders were passed which is bad in the eye of law.

3. In the counter affidavit filed on behalf of respondent Nos. 2 & 4 it is submitted that respondent No.3 has rightly re-fixed the pay of the petitioner right from 01.01.1986 and 01.01.1996 and thus rightly arrived at the last pay at Rs. 10,975/- on the date of his retirement. On examination of the pension case of the petitioner it was found that earlier due to wrong pay fixation the petitioner was paid excess amount of salary and allowance, which is recoverable from him. It was also contended that in view of the Fundamental Rule 19 of the Financial Hand Book, Volume II, Part 2 to 4, petitioner's salary for the post shall not exceed the amount of pay which shall be fixed by the competent authority and in the light of these facts petitioner's pay fixation as revised by the respondent No.3 has no illegality. Only the defects of the wrong pay fixation have been removed by the revised pay fixation order dated 23.3.2005. It is contended that the Service Book of the petitioners shows that on 1.1.1986 on the basis of pay scale Rs. 1640-2900/- the basic pay of the petitioner was to be Rs. 1880/- instead of Rs. 1940/- since on 1.7.1982 the petitioner was granted selection grade. According to Para-3 (8) of G.O. dated 3.6.1989 read with G.O. dated 31.5.1990 it is clear that one increment will not be admissible to those employees who had already been granted selection grade. Further the petitioner should have been granted promotional pay scale on 1.7.1988 on completion of 16 years of service and his basic pay accordingly fixed at Rs. 2200/-. But the petitioner was wrongly granted promotional pay scale from 1.2.1988 and his basic pay was wrongly fixed at Rs. 2275/-.

4. It is also contended in the counter affidavit that after completion of 20 years of service on 1.3.1985 basic pay of the petitioner should have been Rs. 2725/- and on 1.1.1996 on basis of the pay scale Rs. 8000-13500/-, the revised pay (basic) of the petitioner should have been Rs. 8500/-. Thereafter on completion of 24 years of service on 1.3.2000, the basic pay of the petitioner should have been fixed at Rs. 10, 000/- and on his superannuation, the basis pay of the petitioner should have been fixed at Rs. 10,975/- instead of Rs. 11625/-. It is also contended that the petitioner was promoted to the post of Assistant Engineer on 28.7.2000 on the pay scale of Rs. 8000-13,500/- whereas the petitioner was granted 2nd Promotional Pay Scale of Executive Engineer on 1.3.2000 (i.e. Rs. 10,000-15,200). Therefore, the petitioner was not entitled to any benefit of salary on promotion to the post of Assistant Engineer on 28.7.2000 as he had already been granted higher pay scale prior to his promotion. It is also contended that since the basic pay of the petitioner was reduced and the pension is calculated on the basis of the last pay admissible (average of last 10 months pay), the pension of the petitioner was automatically reduced.

5. We have heard Sri S.K. Jain, learned counsel for the petitioner and learned Addl. Chief Standing Counsel, counsel for the State of U.P. / respondents and perused the record.

6. The basic pay as defined in the Financial Hand Book Vol. –II Part 2-4 reads as under:-

> ***"The pay, other than special pay or pay granted in view of his personal qualification, which has been sanctioned for a post held by him substantively or an officiating capacity or to which he is entitled by reason of his position in cadre".***

7. According to Fundamental Rule 9 (21) (1), it is necessary to ascertain whether the pay scale granted to the petitioner was admissible to him or not on the date of superannuation and for that purpose the petitioner's service book was examined and it was found that on 1.1.1986 on the basis of the pay scale 1640-2900/- the basic pay of the petitioner was fixed at Rs. 1880/- instead of Rs. 1940/- as the petitioner was granted selection grade on 1.7.1982. The petitioner was given the benefit of selection grade of Rs. 690-1420 w.e.f. 1.7.1982 and accordingly, his pay as on 1.1.1996 was fixed at Rs. 1880/-. Thereafter, again on the same date i.e. 1.1.1986 the petitioner was wrongly given one additional increment for his so called 10 years of service in this pay scale and was fixed at the pay of Rs.1,940/- which was found incorrect because as on 1.1.1996 he had not completed 10 years of service in the said selection grade. The Government Order dated 3.6.1989 provides that those employees whose maximum revised pay scale is Rs.3,500/- and who complete 10 years of satisfactory service after 1.1.1986 on the next date fixed, for providing benefit of selection grade to those employees, their salary on the revised pay scale shall be determined in the next sequence on the same date. Hence, to every employee to whom the benefit of selection grade is provided, he shall be given the benefit of one increment on the same pay scale after completing 10 years of

service. The employees on the pay scale of Rs. 3,500/- and who have reached the maximum of their pay scale, their pay scales shall be increased by adding the amount equal to three last increments in their pay scales. Thus, it is clear that according to said government order dated 3.6.1969, it is clear that one increment will not be admissible to those employees who have already been granted selection grade.

8. The petitioner was granted promotional pay scale on 1.7.1988 after completing 16 years of service, and his basic pay was fixed at Rs.2,200/- but the petitioner was wrongly granted promotional pay scale from 1.2.1988 and hence his basic pay was wrongly fixed at Rs.2,275/-. After completion of 20 years of service on 1.3.1995, the basic pay of the petitioner should have been 2,725/- and on the basis of revised pay scale, the basic pay of the petitioner should have been Rs.8,500/- and accordingly, after 24 years of service on 1.3.2000, the basic pay of the petitioner should have been fixed at Rs, 10,000/- and on his superannuation, the basic pay of the petitioner should have been fixed at Rs. 10,975/- instead of Rs. 11,625/-

9. On 28.7.2000, the petitioner was promoted to the post of Assistant Engineer on 28.7.2000 on the pay scale of Rs.8,000-13,500/- but the petitioner was granted IInd Promotional Pay Scale of Executive Engineer on 1.3.2000 which was Rs. 10,000-15,200/-. Hence, the petitioner is not entitled to any benefit of salary on promotion to the post of Assistant Engineer on 28.7.2000 as he had already been granted higher pay scale prior to his promotion.

10. Since the basic pay of the petitioner was reduced and the pension is calculated on the basis of the last pay admissible i.e. average of last 10 months pay, the pension of the petitioner was automatically reduced. The rules regarding calculation of Pension are mentioned in Article 486 of the Civil Service Regulations and also in Pension Rules Vol.6 in view of Part 1 Paragraph 5. For the sake of convenience, Article 486 of the Civil Service Regulations is quoted below:-

> ***"The term emoluments when used in these regulations means the Pay as defined in Rule 9(21) of the U.P. Fundamental Rules which the officer was receiving immediately before his retirements."***

11. Thus in view of the above, the impugned orders dated 23.3.2005 and 23.4.2005 passed by Respondent Nos.3 and 4 respectively by which the pension of the petitioner has wrongly been revised and the order for recovery of the alleged excess amount was passed, have been passed in accordance with the provisions of Rules and the applicable Government Orders and the same do not suffer from any infirmity or illegality.

12. The writ petition is devoid of merit and is accordingly dismissed. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang